

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

BRIAN DEJEAN DESHOTEL,	§	
Petitioner,	§	
	§	
VS.	§	C.A. NO. C-08-320
	§	
NATHANIEL QUARTERMAN,	§	
Director, TDCJ-CID,	§	
Respondent.	§	

**ORDER DENYING WITHOUT PREJUDICE MOTION FOR
APPOINTMENT OF COUNSEL AND FOR AN EVIDENTIARY HEARING**

Petitioner is an inmate in the Texas Department of Criminal Justice - Institutional Division, and is currently incarcerated at the McConnell Unit in Beeville, Texas.

Proceeding *pro se*, petitioner filed a petition pursuant to 28 U.S.C. § 2254, challenging the results of a disciplinary proceeding. Pending are petitioner's motions for appointment of counsel (D.E. 16) and for an evidentiary hearing (D.E. 14).

There is no constitutional right to counsel in federal habeas proceedings. *Johnson v. Hargett*, 978 F.2d 855 (5th Cir. 1992). Rule 8 of the Rules Governing § 2254 Cases requires that counsel be appointed if the habeas petition raises issues which mandate an evidentiary hearing. Determination of whether an evidentiary hearing is warranted is not made until the court has had an opportunity to review the petition, the respondent's answer, and the state court record. Rule 8(b), Rules Governing § 2254 Cases. Here service of the petition has been completed, and a response is due on or before Monday,

January 5, 2008. At this stage of the proceedings, it would be premature to schedule an evidentiary hearing, and appointment of counsel at this time is not warranted..

An evidentiary hearing will be scheduled and counsel will be assigned *sua sponte* if there are issues which mandate a hearing. Moreover, counsel may be assigned if discovery is ordered and issues necessitating the assignment of counsel are evident. Rule 6(a) of the Rules Governing § 2254 Cases; *Thomas v. Scott*, 47 F.3d 713, 715 n. 1 (5th Cir. 1995).

Accordingly, petitioner's motions for an evidentiary hearing (D.E. 14) and for appointment of counsel (D.E. 16) are denied without prejudice.

ORDERED this 2nd day of December, 2008.


B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE